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U.S. to Get Moussaoui Data From Europe

French, Germans Strike Deal Barring Use of Documents to Seek Death Penalty

By Dan Eggen

Washington Post Staff Writer
Thursday, November 28, 2002; Page A19

French and German authorities have agreed to turn over documents relating to terror suspect and French national Zacarias Moussaoui, after being assured by the Justice Department that the evidence will not be used to seek or impose the death penalty, officials said yesterday.

U.S. officials view the documents as particularly crucial because they establish important links between Moussaoui and al Qaeda operatives, including records held by Germany showing money transfers from a member of the Hamburg group that carried out the Sept. 11, 2001, attacks on the World Trade Center and Pentagon.

The agreement will allow U.S. prosecutors to use the French and German evidence in the first phase of a Moussaoui trial, which would establish his guilt or innocence, officials said. But prosecutors would not be allowed to introduce the evidence in the sentencing phase, where

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prosecutors plan to seek the death penalty, officials in all three countries said.

Iraq.

"The United States of America has assured that the evidence and the information submitted by Germany will not directly or indirectly be used against the defendant nor against a third party towards the imposition of the death penalty," the German Embassy in Washington said in a statement.

But public defender Frank W. Dunham, who has been appointed as standby counsel for Moussaoui, said the agreement ignores the reality of U.S. law, which allows juries to consider a defendant's guilt in determining a sentence. Moussaoui, who is representing himself, is scheduled to stand trial June 30 in Alexandria.

"Once the evidence is used in a death penalty case, there's no way to erase it from a jury's mind," Dunham said. "If the U.S. has represented that this evidence is not going to be used to seek the death penalty, they have made a misrepresentation to the foreign governments, unless the U.S. has decided not to seek the death penalty."

Justice Department officials said yesterday they still intend to seek capital punishment for Moussaoui, who is charged with conspiring with the Sept. 11 hijackers. "We have made our position on the death penalty quite clear," one official said.

The agreement, finalized in telephone calls yesterday morning between Attorney General John D. Ashcroft and his French and German counterparts, brings an end to months of legal wrangling that had strained diplomatic relations between the United States and the European community.

Capital punishment has been abolished in all 15 countries of the European Union, and the German constitution does not allow submission of any material that could lead to the death penalty. Europe's ban on the death penalty has frequently complicated legal cooperation with the United States in cases where extradition or evidence is sought.

The pact is particularly crucial in the case of Germany, which has had chilly relations with the Bush administration since a tumultuous election campaign in which Chancellor Gerhard Schroeder sharply criticized U.S. policy toward Iraq and a former justice minister compared

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President Bush to Adolf Hitler.

The German documents in question include details of two money transfers totaling \$14,000 to Moussaoui from Ramzi Binalshibh, an alleged member of the al Qaeda cell in Hamburg that led the Sept. 11, 2001, attacks, sources have said. Binalshibh, now in U.S. custody, has told U.S. authorities that Moussaoui was only a backup in the Sept. 11 plot because he could not be trusted.

Otto Schily, Germany's interior minister, told reporters in Washington last month that the evidence in dispute is "a whole file we have on him, maybe witnesses, maybe documents. It includes more than one detail."

In France, authorities have until now withheld the original version of a dossier detailing Moussaoui's childhood and early adulthood in southern France, including his contacts with Islamic radicals both there and in London, sources say.

French Justice Minister Dominique Perben said on the Public Sénat television channel yesterday that the materials deal with "his personality, his past, his personal direction and the evolution of his links with Islamic fundamentalists."

Oliver Schramm, a spokesman with the German Embassy in Washington, said the agreement announced yesterday "indicates the extent of our cooperation in the war on terrorism."

"To speak of a strain between the two countries is really to go too far," Schramm said. "There is a great deal of exchange of information going back and forth."

Justice officials, including Ashcroft, Deputy Attorney General Larry Thompson and criminal division chief Michael Chertoff, have met frequently with French and German officials, both in Washington and overseas, to try to reach an accord in the case.

One Justice official said yesterday that "we're pleased we could reach accommodation on this. Both sides have an interest in bringing terrorists to justice, and this is a reflection of that goal."

The receipt of the evidence could also help Justice officials in their bid to keep the Moussaoui case within the criminal justice system. Some within the Bush administration have advocated turning Moussaoui over to military custody, although authorities have stressed that there are no plans to do so now.

The agreement has no impact on another legal dispute, in which the United States has refused to allow Binalshibh or Moussaoui to testify in the trial of an alleged al Qaeda cell member in Hamburg, U.S. officials said.

Staff writers Keith B. Richburg in Paris, Tom Jackman in Alexandria and John Mintz in Washington contributed to this report.

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December 2, 2002

Via Facsimile and U.S. Mail

Robert Spencer, Esquire
Assistant United States Attorney
2100 Jamieson Avenue
Alexandria, Virginia 22314

Re: United States v. Zacarias Moussaoui

Dear Rob:

I have been reading in many papers this weekend that the U.S. has reached some deal with the Germans and the French regarding the use of evidence in the Moussaoui case. As I understand from the papers, it has been agreed that the French and German evidence will not be used to give Moussaoui the death penalty but can be used for any other purpose. In this letter I will not question the accuracy of such a representation by the government. Instead, I want to know if and when we might receive a copy of the "agreement" or "understanding" that is referenced in these reports. We would also request a listing of the evidence that may be subject to this "agreement" or "understanding" so that we can know when evidence that is of limited admissibility has been tendered.

I look forward to your response.

Best regards,



Edward B. MacMahon, Jr.

EBM/mlj

cc: Zacarias Moussaoui
Co-Counsel



U.S. Department of Justice

United States Attorney
Eastern District of Virginia

2100 Jamieson Avenue (703)299-3700
Alexandria, Virginia 22314

December 2, 2002

Edward B. MacMahon, Jr., Esq.
107 East Washington Street
Middleburg, VA 20118

Re: United States v. Zacarias Moussaoui; Criminal No. 01-455-A

Dear Ed:


I write in response to your letter dated today regarding Gennan and French evidence.

We currently possess neither the evidence nor any agreement to which you refer. When (and if) we receive evidence from German or French authorities that we intend to offer at trial, or which is otherwise discoverable, we will provide it in discovery. As for the agreement you cite, I believe that you are not entitled to any such agreement, nor do you or your client have standing to contest or enforce any such agreement.

Sincerely,

Paul J. McNulty
United States Attorney

By:


Robert A. Spencer
Assistant United States Attorney

cc: Zacarias Moussaoui